Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 257 of 2002

Rimpy S/o Sri Amreek Singh,
R/o Ahuja Transport Company,
Civil Lines, Rampur, District Rampur.
Owner of vehicle No. UP 22-3814.

.....Appellant

Versus

(1)M/s Oriental Insurance Company Ltd.,
Civil Lines, Rampur through D.M.,
Haldwani, District-Nainital.
2.Smt.Parvesh Kumari W/o Sri Brijesh Kumar
3.Km.Nidhi D/o Sri Brijesh Kumar
4.Sachin Kaltiyar S/o Sri Brijesh Kumar
R/o Ward No.9, Near Gas Agency,
Kichha (Udham Singh Nagar).

..... Opp.parties

.....

Sri Zafar Ullah Siddique, learned counsel for the appellant.

Date: 27th Aug.,2004.

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 22.06.2002 passed by the Motor Accident Claims/Tribunal Addl.District Judge, Nainital in Motor Accident Claim Case No. 72 of 1997, whereby the Opp.party/appellant has been directed to pay Rs. 3,50,000/- as compensation to the claimants alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that deceased Brijesh Kumar was employed in U.P.Police and was posted at Moradabad. On 31.7.1996 he received information regarding ailment of his wife. He proceeded from Moradabad to his home town Kichha. At that no bus

was available at Rampur, he boarded in an oil tanker bearing registration No. UP22-3814. The said tanker dashed with a tree near Village Deoria, within the circle of P.S. Kichha due to rash and negligent driving by its driver resulting the death of Brijesh Kumar on the spot. He was 35 years old and was hale and hearty at the time of accident. The claimants, who are dependents of deceased, filed the claim petition before the Tribunal for compensation to the tune of Rs. 5,00,000/-.

3- The Opposite parties 1 & 2, the owner and the insurer respectively contested the claim petition before the Tribunal by filing their separate written statements. The owner has denied the alleged accident from the vehicle in question and also stated that the said tanker was insured with Opp.party No.2-Oriental Insurance Company Ltd. on the date of accident. The Insurance Company in its written statement admitted the accident and also the insurance of the vehicle in question with it. It was further alleged that the vehicle in question is a tanker and according to the claimants the deceased was travelling in the said tanker as gratuitous passenger and in such circumstances, the Insurance Company is not liable to pay any compensation. On the pleadings of the parties, the Tribunal framed only two issues which reads as under:-

1. *Whether the deceased Pravesh Kumar died on 31.7.1996 while travelling in Canter No. UP22-3814 which was dashed with a tree due to rash and negligent driving of its driver resulting the death of the deceased on the spot?*

2. *To what amount of compensation, if any, are the claimants entitled?*

4- The learned Tribunal believing on the statement of P.W.2 Mohd.Ahmad, who was also travelling in the said tanker and also received injuries in the said accident, held

that the accident was occurred due to rash and negligent driving of the driver of offending vehicle. The said evidence of P.W.2 has not been rebutted by any of the opposite parties by adducing any evidence. Issue No.2 is related to quantum of compensation. The learned Tribunal held that the vehicle was insured only for third party risk and the deceased was travelling in the said vehicle as gratuitous passenger. The Tribunal relied on the case law of Apex Court in the case *Dr.T.V.Jose versus Chako P. M. alias Thankachan and others,* reported in 2001 (8) Supreme Court Cases, 748 in which the Apex Court has held that if the vehicle was insured for third party risk, the Insurance Company is not liable to pay the compensation for gratuitous passengers. The Tribunal further held that the owner of the said Tanker No. UP 22-3814 is liable to pay the compensation and allowed the claim petition accordingly.

5- The learned counsel for the appellant contended that the learned Tribunal has erred not to peruse the judgment of Apex Court in New India Assurance Company Ltd. versus Satpal Singh, reported in (2000) 1 Supreme Court Cases, 223 in which the Hon'ble Division Bench has held that the risk of gratuitous passenger in any type of vehicle is covered and will be treated as third party risk cover under the policy and the insurance will be liable for the payment of compensation.

6- We have gone through the material on record. We find that the facts of the Satpal Singh's Case (supra) are different with the facts and circumstances of the instant case. We also find that the Tribunal has rightly appreciated the evidence adduced by the parties and committed no error. The impugned order does not call for any interference.

7- The contention of the learned counsel for the appellant has also no force because the law laid down by the Apex Court in Satpal Singh' case (supra) has been overruled subsequently by three Judges Bench of the Apex Court in the case *New India Assurance Company Ltd. versus Asha Rani & others,* reported in *(2003) 2 Supreme Court Cases, 223.*

8- The appeal has no force and is hereby dismissed. No order as to costs. The amount deposited in the appeal shall be remitted to the concerned Tribunal.

(B.S.Verma, J.) **(P.C.Verma, J.)**

27.08.2004

P.Singh